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IN THE HIGH COURT OF KARNATAKA AT BANGALORE  
DATED THIS THE 2ND DAY OF JUNE 1998

BEFORE  
THE HON'BLE MR.JUSTICE V.K.SINGHAL  
WRIT PETITION NO. 10022 OF 1998

BETWEEN:

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RPG Transmission Limited .  
(Formerly Known as SAM(India)Ltd.,)  
an existing company under the  
Companies Act, 1956, with its  
registered office at 29 & 30,  
Community Commercial Center,  
Basant Lok, Vasant Vihar,  
New Delhi-57 and a branch, inter alia,  
at 358, 13 th 'A' Main, Yelahanka New Town,  
Bangalore-64 and a site office  
at Circuit House Road,  
Shimoga-577 201.  
and rep.herein by its  
Chief Resident Manager at  
Bangalore Mr.K.S.Panicker. ..Petitioner.

(By M/s King & Patridge, Adv.)

AND:

1. The Joint Commissioner of  
Commercial Taxes (Appeals).

Malnad Division,  
Ratnamma-Madhava Rao Road,  
Shimoga-577 201.

- I . . .
2. The Deputy Commissioner of  
Commercial Taxes (Assessments),  
Mamcos Building, Kote Post Office Rd.,  
Shimoga-577 201. ..Respondents.

(By Smt. S.Sujatha, HCGP)

Writ Petition is filed under Articles 226  
of the Constitution of India with an affidavit  
praying to modify the R-1 order dated 11.3.98 vide  
Ann.D as to confer unconditional stay of the  
entire demand till the appeal before the R-1 is  
disposed of.etc.,

Writ Petition is coming on the Further Orders  
this day, the Court made the following:

O R D E R

Appeal is pending before the Joint Commissioner  
of Commercial Taxes.

This appeal is filed against the order filed  
against the

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against the order dated 11.3.1998 directing to make payment of 50% in cash and furnishing Bank Guarantee for the balance. Submission of the learned Counsel for the petitioner is that C.S.T on the transactions in question has already been paid in the State of Madhya Pradesh and the Union Territory of Delhi and in view of the decision of the Apex Court in K.C.P.Ltd., Vs STATE OF M.P (1998) 108 STC 580, no tax is payable. Merits of the case <sup>Cannot</sup> ~~cannot~~ be considered at this stage and it is for the appellate authority to examine it. Learned Counsel for the petitioner also submitted that the appeal could be argued by them on merit. Learned Government Pleader submitted that the state Cannot function simply on Bank Guarantees.

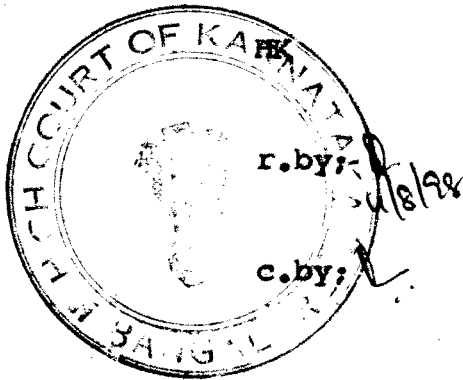
I have considered over the matter. Normally this Court in such a discretionary matter cannot interfere in the extraordinary jurisdiction. The appellate authority when the transaction is one and of similar nature either should have rejected the stay application or should have granted the entire stay.

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Looking to the facts and circumstances of the case if the petitioner furnishes Bank Guarantee of nationalised bank within 21 days from today, the appellate authority will hear the appeal on merit and dispose of the same expeditiously, Preferably within a period of four months from the date of furnishing Bank Guarantee. The Validity of Bank Guarantee to be furnished shall not be less than six months.

Petition stands disposed of accordingly.

Sd/-JUDGE.



**COPY**

Wz  
Assistant Registrar  
High Court of Karnataka  
Bangalore-560 001  
MSB-R-9A  
4/8/98